

## REMARKS/ARGUMENTS

The Examiner rejected claims 3, 13, and 25 under the judicially created doctrine of obviousness-type double patenting over U.S. Patent No. 6,697,969. Applicants submit herewith a terminal disclaimer to overcome this rejection.

Applicants canceled claims 2, 12, and 24 to overcome the objection to these claims.

Applicants amended claims 5, 8, 15, and 26 to include the Examiner's suggested changes to overcome the objection to these claims.

1. The Amended Claims Comply With 35 U.S.C. §112, par. 2

The Examiner rejected claims 14, 21, 22, and 23 as indefinite on the grounds it is unclear how the average performance data is displayed. Applicants amended these claims to clarify that both the determined performance data and the average performance data are displayed at the customer computer being diagnosed.

Applicants request that this clarification amendment overcomes the rejection.

2. The Claims Comply with 35 U.S.C. §101

The Examiner rejected claims 23-30 as directed to non-statutory subject matter on the grounds that the claims could cover intangible embodiments.

Although Applicants traverse this finding, Applicants amend claim 23 to clarify that the computer useable medium is a computer readable medium. Applicants submit that a computer readable medium is tangible subject matter.

Applicants request withdrawal of this rejection.

3. Claims 3, 5, 7, 8, 10, 13-15, 17, 18, 20-23, 25, 28, and 30 are Patentable Over the Cited Art

The Examiner rejected claims 3, 5, 7, 8, 10, 13-15, 17, 18, 20-23, 25-28, and 30 as obvious (35 U.S.C. §103) over Barrick (U.S. Patent No. 6,006,260) in view of Johnson (U.S. Patent No. 6,397,245). Applicants traverse with respect to the amended claims.

Amended independent claims 21, 22, and 23 concern diagnosing a customer computer over a network, and require: initiating a customer service session to provide technical support of

the customer computer; transmitting a program to execute on the customer computer, wherein the program causes the customer computer to perform: (i) downloading at least one object from a server to the customer computer over the network; (ii) determining performance data comprising a network transmission time to download the object from the server to the customer computer over the network to diagnose performance problems with the customer computer; (iii) displaying at the customer computer being diagnosed both the determined performance data for the customer computer and average performance data to provide information to diagnose the customer computer, wherein the average performance data includes network performance data for other computers in the network; (iv) transmitting the determined performance data to the diagnostic system over the network; and using the performance data transmitted to the diagnostic system to provide technical support for the customer computer.

Applicants amended these claims to further require that the average performance data includes network performance data for other computers in the network, in addition to the clarifying amendments discussed above. This added requirement is disclosed on at least pg. 13, lines 21-28 of the Application.

Applicants further amended claim 21 to provide antecedent basis for the “diagnostic system” element. Applicants amended claim 22 to remove the term “diagnostic system” and to clarify that the performance data that is used is the received performance data.

The Examiner cited col. 8, lines 10-11, col. 2, lines 8-12, col. 1, lines 54-56, and col. 4, lines 66-67 of Barrick with respect to the amended claim requirement of displaying at the customer computer being diagnosed both the determined performance data for the customer computer and average performance data to provide information to diagnose the customer computer, wherein the average performance data includes network performance data for other computers in the network. (Office Action, pg. 6) Applicants traverse with respect to the amended claims.

The cited col. 8 of Barrick mentions that the browser displays a qualitative assessment to the user. Col. 8 mentions that rather than sending the download time, the browser agent makes a qualitative assessment of network performance and sends the assessment. This assessment is of the network performance time of the system gathering the data. (Barrick, col. 7, lines 50-66). Nowhere does the cited col. 8 anywhere teach or suggest displaying at the customer computer

being diagnosed both determined performance data for the customer computer and average performance data including network performance data for other computers in the network. Instead, the cited col. 8 discusses only displaying an assessment of the performance at the computer being tested, not additionally average performance data of other computers in the network as claimed.

The cited col. 2 of Barrick mentions that data of download time for a system can be combined with data from other users and stored in a central database. A map can be generated and stored that indicates the performance experience by users in different regions.

The cited col. 2 discusses how a central site may gather and store performance data from different systems. However, nowhere does the cited col. 2 anywhere teach or suggest the claim requirement that the computer being diagnosed that gathered its own performance data additionally display average performance data for other computers in the network. The cited col. 2 discusses how the performance data is gathered for computers in the network, but does not teach or suggest that the computer being diagnosed displays average performance data to diagnose the computer along with the determined performance data for the diagnosed computer.

The cited col. 1 of Barrick mentions that special testing machines do not provide information about actual historical user connections and the cited col. 4 mentions that a database server is located at the site of the Web page provider, internet provider or the download timing service center. Nowhere do these cited cols. 1 and 4 anywhere teach or suggest the claim requirement that the computer being diagnosed that gathered its own performance data additionally display average performance data for other computers in the network.

The Examiner did not cite Johnson for the claim requirement concerning the displaying of the determined performance data and average performance data. (Office Action, pg. 6).

Accordingly, Applicants submit that claims 21, 22, and 23 are patentable over the cited art because the cited Barrick and Johnson, alone or in combination, does not teach or suggest all the claim requirements.

Claims 3, 5, 7, 8, 10, 13-15, 17, 18, 20 and 25-28, and 30 are patentable over the cited art because they depend from one of claims 21, 22, and 23, which are patentable over the cited art for the reasons discussed above. The below discussed dependent provide additional grounds of distinction over the cited art.

Claims 8, 18, and 28 depend from claims 21, 22, and 23, respectively, and further require that the program causes the customer computer to perform: detecting a presence of a condition occurring as a result of downloading the at least one object from the server; building an electronic message addressed to the diagnostic computer including information on the detected condition; and transmitting the electronic message to the diagnostic computer over the network.

The Examiner cited col. 8, lines 62-66 and the HTTP Get request header of Barrick as teaching the additional requirements of these claims. (Office Action, pg. 8) Applicants traverse.

The cited col. 8 mentions fields in an HTTP GET request header that have been altered to transfer download timing information to a relay server. The download time measured by the browser agent is encoded in a field that the browser agent sends to the relay server.

Nowhere does the cited col. 8 anywhere disclose detecting the presence of a condition occurring as a result of downloading the object from the sever, and then sending a message to the diagnostic computer on the detected condition. In the cited col. 8, the browser agent places information on the download time in the HTTP header. Nowhere is there any teaching of additionally including in the HTTP header information on a detected condition occurring as a result of downloading the object.

Accordingly, claims 8, 18, and 28 provide additional grounds of distinction over the cited art because the cited Barrick does not teach or suggest the additional requirements of these claims.

4. Added claims 31-36 are Patentable Over the Cited Art

Added claims 31, 33, and 35 depend from claims 21, 22, and 23, respectively, and further require that the average performance data is provided from information in a database having network performance data for multiple computers in the network.

Added claims 32, 34, and 36 depend from claims 21, 22, and 23, respectively, and further require that the network performance data is gathered from the computers in the network by transmitting the program to the computers in the network to cause the computers to transmit their determined performance data, wherein the determined performance data from the computers is stored in the database.

The additional requirements of these added claims are disclosed on at least pg. 13, lines 21-28 of the Application.

Applicants submit that claims 31-36 are patentable over the cited art because they depend from one of claims 21, 22, and 23, which are patentable over the cited art for the reasons discussed above and because the additional requirements of these claims in combination with the base claims provide further grounds of distinction over the cited art.

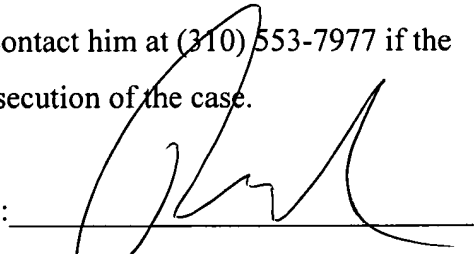
### Conclusion

For all the above reasons, Applicant submits that the pending claims 3, 5, 7-10, 13-15, 17-23 and 25-36 are patentable over the art of record. Applicants submit herewith have not added any claims. Nonetheless, should any additional fees be required, please charge Deposit Account No. 09-0457.

The attorney of record invites the Examiner to contact him at (310) 553-7977 if the Examiner believes such contact would advance the prosecution of the case.

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